

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANNY RAY ELDHARDT,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:15-CV-3207-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 16; 21). This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS** Defendant's motion and denies Plaintiff's motion.

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying his supplemental security income under Title XVI of the Social Security Act.

Plaintiff raises the following four issues for this Court's review:

(1) Whether the ALJ improperly rejected the medical opinion evidence.

(2) Whether the ALJ improperly rejected Plaintiff's subjective complaints.

(3) Whether the ALJ improperly assessed Plaintiff's RFC.

ECF No. 16 at 2. The Court evaluates each issue in turn.

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). This requires "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its

1 judgment for that of the Commissioner. If the evidence in the record “is
2 susceptible to more than one rational interpretation, [the court] must uphold the
3 ALJ’s findings if they are supported by inferences reasonably drawn from the
4 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
5 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
6 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
7 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
8 The party appealing the ALJ’s decision generally bears the burden of establishing
9 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

10 We review only the reasons provided by the ALJ in the disability
11 determination and may not affirm the ALJ on a ground upon which the ALJ did not
12 rely. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*,
13 340 F.3d 871, 874 (9th Cir. 2003)).

14 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

15 A claimant must satisfy two conditions to be considered “disabled” within
16 the meaning of the Social Security Act. First, the claimant must be “unable to
17 engage in any substantial gainful activity by reason of any medically determinable
18 physical or mental impairment which can be expected to result in death or which
19 has lasted or can be expected to last for a continuous period of not less than twelve
20 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be

1 “of such severity that he is not only unable to do his previous work[,] but cannot,
2 considering his age, education, and work experience, engage in any other kind of
3 substantial gainful work which exists in the national economy.” *Id.*
4 § 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential analysis to
6 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
7 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
8 work activity. *Id.* § 416.920(a)(4)(i). If the claimant is engaged in “substantial
9 gainful activity,” the Commissioner must find that the claimant is not disabled. *Id.*
10 § 416.920(b).

11 If the claimant is not engaged in substantial gainful activities, the analysis
12 proceeds to step two. At this step, the Commissioner considers the severity of the
13 claimant’s impairment. *Id.* § 416.920(a)(4)(ii). If the claimant suffers from “any
14 impairment or combination of impairments which significantly limits [his or her]
15 physical or mental ability to do basic work activities,” the analysis proceeds to step
16 three. *Id.* § 416.920(c). If the claimant’s impairment does not satisfy this severity
17 threshold, however, the Commissioner must find that the claimant is not disabled.
18 *Id.*

19 At step three, the Commissioner compares the claimant’s impairment to
20 several impairments recognized by the Commissioner to be so severe as to

1 preclude a person from engaging in substantial gainful activity. *Id.*

2 § 416.920(a)(4)(iii). If the impairment is as severe as or more severe than one of
3 the enumerated impairments the Commissioner must find the claimant disabled
4 and award benefits. *Id.* § 416.920(d).

5 If the severity of the claimant's impairment does meet or exceed the severity
6 of the enumerated impairments, the Commissioner must pause to assess the
7 claimant's "residual functional capacity." Residual functional capacity (RFC),
8 defined generally as the claimant's ability to perform physical and mental work
9 activities on a sustained basis despite his or her limitations, *id.* § 416.945(a)(1), is
10 relevant to both the fourth and fifth steps of the analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing work that he or she has performed in
13 the past (past relevant work). *Id.* § 416.920(a)(4)(iv). If the claimant is capable of
14 performing past relevant work, the Commissioner must find that the claimant is not
15 disabled. *Id.* § 416.920(f). If the claimant is incapable of performing such work,
16 the analysis proceeds to step five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 *Id.* § 416.920(a)(4)(v). In making this determination, the Commissioner must also
20 consider vocational factors such as the claimant's age, education and work

1 experience. *Id.* If the claimant is capable of adjusting to other work, the
2 Commissioner must find that the claimant is not disabled. *Id.* § 416.920(g)(1). If
3 the claimant is not capable of adjusting to other work, the analysis concludes with
4 a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

5 The burden of proof is on claimant at steps one through four above. *Bray v.*
6 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the analysis
7 proceeds to step five, the burden shifts to the Commissioner to establish that (1) the
8 claimant is capable of performing other work; and (2) such work “exists in
9 significant numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran*
10 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 ADMINISTRATIVE PROCEEDINGS

12 On February 2, 2009, Danny Ray Eldhardt filed a claim for Supplemental
13 Security Income (SSI) under Title XVI, alleging disability beginning on April 22,
14 2007. ECF Nos. 13-3 at 2-3; 13-5 at 2-5. Mr. Eldhardt’s application was denied
15 initially and upon reconsideration. ECF No. 13-3 at 4-5. He thereafter filed a
16 written request for hearing. ECF No. 13-4 at 23-25. A hearing was held before an
17 Administrative Law Judge (ALJ) on April 21, 2011. ECF No. 13-2 at 46. In a
18 decision filed on June 15, 2011, the ALJ denied Mr. Eldhardt’s SSI application.
19 ECF No. 13-3 at 6-17.

1 The Appeals Council thereafter granted Mr. Eldhardt's request for review.
2 ECF Nos. 13-3 at 25-26; 13-4 at 85-87. In an order filed on September 6, 2012,
3 the Appeals Council vacated the ALJ's hearing decision and remanded for
4 consideration of the medical opinion of treating source Paul Schmitt, M.D., to
5 obtain updated medical records, to further consider Mr. Eldhardt's residual
6 functional capacity (RFC), and to obtain vocational evidence if warranted. ECF
7 No. 13-3 at 25-26.

8 The ALJ held an additional hearing on April 16, 2014. ECF No. 13-2 at 83-
9 113. On April 24, 2014, the ALJ rendered a decision denying Plaintiff's claim.
10 ECF No. 13-2 at 83. At step one, the ALJ found that Plaintiff had not engaged in
11 substantial gainful activity since February 2, 2009, the application date. ECF No.
12 13-2 at 23. At step two, the ALJ found that Plaintiff had the following severe
13 impairments: osteoarthritis of multiple joints, status post bilateral hip replacement
14 and bilateral knee arthroscopies, thoracic outlet syndrome, and coronary artery
15 disease, status post myocardial infarction and two stent placements (20 CFR
16 416.920(c)). ECF No. 13-2 at 24. At step three, the ALJ found that Plaintiff does
17 not have an impairment or combination of impairments that meets or medically
18 equals a listed impairment. ECF No. 13-2 at 26. The ALJ then concluded that
19 Plaintiff had the RFC:

20 [T]o perform less than the full range of sedentary work as defined in 20 CFR
416.967(a). The claimant can lift no more than 10 pounds at a time. The

1 claimant can occasionally lift and carry articles such as docket files, ledgers,
2 and small tools. He can stand and/or walk two hours in an eight-hour
3 workday and sit six hours in an eight-hour workday. The claimant can
4 occasionally push and pull within the lifting restrictions described herein
5 with the left upper extremity. The claimant is ambidextrous. The claimant
6 can occasionally reach overhead with the left upper extremity. He can
7 occasionally balance, stoop, crouch, kneel, crawl, and climb ramps and
8 stairs. He should avoid concentrated exposure to unprotected heights and
9 the use of moving machinery. Additionally, the claimant should not work
10 around children.

11 ECF No. 13-2 at 26. At step four, the ALJ found Plaintiff is not capable of
12 performing past relevant work. ECF No. 13-2 at 34-35. The ALJ proceeded to
13 step five and found that, considering Plaintiff's age, education, work experience,
14 and RFC, there are jobs in significant numbers in the national economy that
15 Plaintiff could perform. ECF No. 13-2 at 35. On that basis, the ALJ concluded
16 that Plaintiff was not disabled as defined in the Social Security Act. ECF No. 13-2
17 at 36.

18 Mr. Eldhardt thereafter filed a request for review with the Appeals Council,
19 which was denied. ECF No. 13-2 at 2-7. The ALJ's decision became the final
20 decision of the Commissioner. ECF No. 13-2 at 2; 20 C.F.R. §§ 404.981, 422.201.

DISCUSSION

A. Opinions of Dr. Volkmann and Dr. Schmitt

A treating physician's opinions are generally entitled to substantial weight in
social security proceedings. *Bray*, 554 F.3d at 1228 (citation omitted); *Orn*, 495

1 F.3d at 631 (“By rule, the Social Security Administration favors the opinion of a
2 treating physician over non-treating physicians.”) (citing 20 C.F.R. § 404.1527)).
3 “[I]f a treating physician’s opinion is ‘well-supported by medically acceptable
4 clinical and laboratory diagnostic techniques and is not inconsistent with the other
5 substantial evidence in the case record, it will be given controlling weight.’” *Orn*,
6 495 F.3d at 631 (quoting 20 C.F.R. § 404.1527(d)(2)) (brackets omitted). If a
7 treating or examining physician’s opinion is uncontradicted, an ALJ may reject it
8 only by offering “clear and convincing reasons that are supported by substantial
9 evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citation
10 omitted).

11 However, the “ALJ need not accept the opinion of any physician, including
12 a treating physician, if that opinion is brief, conclusory, and inadequately
13 supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation, internal
14 brackets, and citation omitted). Moreover, “[i]f there is ‘substantial evidence’ in
15 the record contradicting the opinion of the treating physician, the opinion of the
16 treating physician is no longer entitled to ‘controlling weight.’” *Orn*, 495 F.3d at
17 632 (quoting 20 C.F.R. § 404.1527(d)(2)). Despite this, “[i]n many cases, a
18 treating source’s medical opinion will be entitled to the greatest weight and should
19 be adopted, even if it does not meet the test for controlling weight.” *Ghanim v.*
20 *Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (quoting *Orn*, 495 F.3d at 631).

1 If a treating physician's opinion is not given "controlling weight" because it
2 is not "well-supported" or because it is inconsistent with other substantial evidence
3 in the record, the Administration considers specified factors in determining the
4 weight it will be given as set out in 20 C.F.R. § 404.1527(c)(2)-(6). *Orn*, 495 F.3d
5 at 631. "These factors include the 'length of the treatment relationship and the
6 frequency of examination' by the treating physicians, the 'nature and extent of the
7 treatment relationship' between the patient and the treating physician, the
8 'supportability' of the physician's opinion with medical evidence and the
9 consistency of the physician's opinion with the record as a whole." *Ghanim*, 763
10 F.3d at 1161 (brackets omitted).

11 Additional factors relevant to evaluating any medical opinion, not limited to
12 the opinion of the treating physician, include the amount of relevant
13 evidence that supports the opinion and the quality of the explanation
14 provided; the consistency of the medical opinion with the record as a whole;
15 the specialty of the physician providing the opinion; and "[o]ther factors"
16 such as the degree of understanding a physician has of the Administration's
17 "disability programs and their evidentiary requirements" and the degree of
18 his or her familiarity with other information in the case record.

19 *Orn*, 495 F.3d at 631 (citing 20 C.F.R. § 404.1527(d)(3)-(6)).

20 An ALJ may only reject a treating physician's contradicted opinions by
"providing specific and legitimate reasons that are supported by *substantial*
evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81 F.3d 821, 830–31
(9th Cir. 1995)) (emphasis own). "This is so because, even when contradicted, a

1 treating or examining physician's opinion is still owed deference and will often be
2 'entitled to the greatest weight . . . even if it does not meet the test for controlling
3 weight.'" *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (citing *Orn*, 495
4 F.3d at 633).

5 The phrase "supported by substantial evidences" means "such relevant
6 evidence as a reasonable mind might accept as adequate to support a conclusion."
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison*
8 *Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "An ALJ can satisfy the 'substantial
9 evidence' requirement by 'setting out a detailed and thorough summary of the facts
10 and conflicting clinical evidence, stating his interpretation thereof, and making
11 findings.'" *Garrison*, 759 F.3d at 1012) (quoting *Reddick v. Chater*, 157 F.3d 715,
12 725 (9th Cir. 1998)).

13 **1. Dr. Volkmann**

14 Dr. Volkmann is an orthopedic surgeon and has treated Plaintiff for many
15 years. ECF No. 16 at 7. Based upon MRI results indicating "advanced
16 degenerative changes," Dr. Volkmann performed bilateral total hip replacements in
17 March and December 2007. ECF No. 16 at 7. In late 2007, Dr. Volkmann
18 completed physical evaluations of Mr. Eldhardt and concluded Mr. Eldhardt was
19 limited to performing sedentary work. ECF Nos. 16 at 8; 13-8 at 138, 144.

1 According to Dr. Volkmann's treatment records dated April 8, 2008, Mr.
2 Eldhardt's hips were "doing fine," but Mr. Eldhardt came in complaining that "his
3 knees hurt. They pop, they catch, they lock up, they give away." EDCF No. 13-7
4 at 238. Subsequently, Dr. Volkmann performed bilateral knee arthroscopies and
5 synovectomies in April 2008 and January 2009. ECF Nos. 16 at 8; 12-7 at 240,
6 247.

7 On January 29, 2009, at Mr. Eldhardt's one-week check-up for his second
8 knee surgery, Dr. Volkmann commented that "Danny is actually doing quite well.
9 His knee has just minimal swelling, almost no effusion. He is walking without
10 support . . . He can resume activity as tolerated. His shoulder pain was also
11 suggested by Dr. Dickson to be arising from thoracic outlet syndrome" ECF
12 No. 13-7 at 248. On that same day, Dr. Volkmann completed another physical
13 evaluation of Mr. Eldhardt. ECF Nos. 16 at 8; 13-7 at 233-35. On the evaluation,
14 Dr. Volkmann noted Mr. Eldhardt's dual hip and knee surgeries and indicated that
15 Mr. Eldhardt had Rheumatoid Arthritis that "severely" affected Mr. Eldhardt's
16 ability to perform: (a) sitting, (b) standing, (c) walking, (d) lifting, (e) handling,
17 and (f) carrying. ECF No. 13-7 at 234. Dr. Volkmann concluded that Mr.
18 Eldhardt is "severely limited" by his impairments, unable to perform even
19 sedentary work. ECF Nos. 16 at 8; 13-7 at 234.

20 The ALJ accorded "significant weight" to Dr. Volkmann's 2007 opinions

1 that Mr. Eldhardt was capable of performing sedentary work, but the ALJ rejected
2 Dr. Volkmann's January 2009 opinion that Mr. Eldhardt cannot perform even
3 sedentary work. ECF No. 13-2 at 34. In the ALJ's first decision dated June 15,
4 2011 (ECF No. 13-3 at 6-17) the ALJ noted that "Dr. Volkmann's opinion is not
5 consistent with his own treatment notes or the care he has given to the claimant"
6 and that "[t]here is no evidence that the claimant is unable to ambulate due to his
7 osteoarthritis or any other condition; even the claimant's own complaints are not
8 so exaggerated." ECF No. 13-3 at 15. The ALJ further noted that "[s]uch a
9 catastrophic opinion is also not consistent with DDS and the claimant's primary
10 care physician, Dr. Schmitt." The ALJ's second decision dated April 24, 2014
11 gave a more cursory explanation for according Dr. Volkmann's 2013 opinion less
12 weight, stating that Dr. Volkmann gave "no explanation" for this change in his
13 opinions, and that the January 2009 opinion is "not consistent with Dr.
14 Volkmann's own treatment records" ECF No. 13-2 at 34.

15 In short, the ALJ discounted Dr. Volkmann's opinion due to contradicting
16 evidence and a lack of substantiation. The lack of support is a sufficient basis for
17 discounting the 2009 opinion, as the opinion was conclusory and not substantiated
18 with objective clinical evidence. *Bray*, 554 F.3d at 1228 ("ALJ need not accept the
19 opinion of any physician, including a treating physician, if that opinion is brief,
20 conclusory, and inadequately supported by clinical findings.") (quotation, internal

1 brackets, and citation omitted); *Ghanim*, 763 F.3d at 1161 (factors for weighing
2 contradicted treating physician’s opinion include “‘supportability’ of the
3 physician’s opinion with medical evidence”). Moreover, although the ALJ
4 could have been more detailed in explaining the exact inconsistencies, the
5 contradiction is apparent. *Compare, e.g.*, ECF No. 13-7 at 248 (“He is walking
6 without support . . . He is doing well. He can resume activity as tolerated.”), *with*
7 ECF No. 13-7 at 235 (claimant is unable to lift at least 2 pounds or unable to stand
8 and/or walk).

9 Plaintiff argues that the ALJ’s reasoning is unsupported by the record. ECF
10 No. 16 at 8. Plaintiff argues that, unlike the evaluations in 2007, the 2009
11 evaluation takes into account Plaintiff’s difficulty with his knees, which is notable
12 given Plaintiff had surgery on both knees in between the two purportedly
13 contradictory opinions. ECF No. 16 at 9. Plaintiff further points to medical
14 evidence indicating Mr. Eldhardt’s condition changed. ECF No. 16 at 10 (“Dr.
15 Volkmann observed patellofemoral crepitus and sensitivity across the medial
16 parapatellar region. An MRI revealed degenerative changes and
17 chondromalacia.”) (citing ECF No. 13-7 at 28, 238). Dr. Volkmann’s treatment
18 notes further reference shoulder pain. ECF No. 13-7 at 242. However, these
19 proposed explanations for the change in opinion do not eviscerate the concern that
20 the opinion lacks objective substantiation and is contradicted by Dr. Volkmann’s

1 own notes and other opinions.

2 The ALJ did not err in rejecting Dr. Volkmann's opinion.

3 **2. Dr. Schmitt**

4 Dr. Schmitt has treated Mr. Eldhardt since 1976, and has seen him numerous
5 times over the last decade. ECF Nos. 13-2 at 31-33; 13-6 at 11. Dr. Schmitt saw
6 Mr. Eldhardt for an array of problems from 2008 to 2013, and over that time Dr.
7 Schmitt's opinion of Mr. Eldhardt's ability to work changed significantly. For
8 example, Dr. Schmitt opined that Mr. Eldhardt was limited to "light" work on
9 February 8, 2010, ECF No. 13-8 at 133; limited to "sedentary" work on May 20,
10 2010; limited to lifting twenty pounds at maximum and ten pounds frequently on
11 January 20, 2012, ECF No. 13-8 at 156, which is equivalent to the "light" work
12 category, ECF No. 13-8 at 75; and then not able to work on February 22, 2013.
13 ECF No. 13-8 at 178. The opinion dated February 22, 2013 stated that the
14 limitations had existed since at least January 2008. ECF No. 13-8 at 178.

15 The ALJ accorded the opinions of Dr. Schmitt "limited weight",
16 complaining of internal inconsistencies and insufficient objective findings:

17 Dr. Schmitt has provided several statements regarding the claimant's ability
18 to work; some of his opinions indicate that the claimant is capable of work at
19 the light exertional level and some indicate the ability to work at the
20 sedentary exertional level. Further, Dr. Schmitt has also variously opined
that the claimant would miss 1 to 4 days of work per month or opined that he
was unable to speculate on the claimant's number of absences. The
claimant's treatment records indicate that he is mild to moderate
osteoarthritis with minimal objective findings. He has some tenderness and

1 some pain with motion but most of Dr. Schmitt objective findings in the
2 treatment record are not consistent with an inability to work and are not
3 consistent with missing more than one day per month due to his
4 impairments.

ECF No. 13-2 at 33.

5 Plaintiff proffers a satisfactory explanation for the apparent inconsistencies
6 with respect to the number of days Dr. Schmitt opined claimant may not be able to
7 work, noting that the allegedly contradictory opinions come from different forms—
8 only one of which provides a space for the number of days Mr. Eldhardt may miss
9 work. ECF No. 16 at 12, fn. 11; *compare* ECF No. 13-8 at 109-112 (no specific
10 question for days missed; dated May 20, 2010), ECF No. 13-8 at 165-166 (same;
11 dated August 16, 2010), *and* ECF No. 13-8 at 156-157 (same; dated March 12,
12 2012), *with* ECF No. 13-8 at 154-155 (4 or more days per month; dated March 19,
13 2011), ECF No. 13-8 at 161-162 (“probably 1-4 days / mo”; dated December 4,
14 2012), *and* ECF No. 13-8 at 176-177 (4 or more days per month; dated February
15 22, 2013).

16 Notably, while according the opinion limited weight, the ALJ’s
17 determination was mostly consistent with Dr. Schmitt’s opinions, except for two
18 opinions in 2013, which stated Mr. Eldhardt was fully disabled. ECF No. 13-8 at
19 178. The opinion dated July 22, 2013 states that the opinion was not based on a
20 contemporaneous visit, but was actually based on a previous visit dating back to

1 December 2012. ECF No. 13-9 at 67. This opinion concludes Mr. Eldhardt is
2 disabled by his arthritis, but gives no analysis, so only the opinion dated February
3 22, 2013, will be discussed further.

4 The February 22, 2013 opinion is contradicted by Dr. Schmitt's own
5 records. Importantly, the opinion incorrectly states that the limitations had existed
6 since at least January 2008. This is plainly contradicted because Dr. Schmitt's
7 opinion changed over the years from 2008 to 2013. Consequently, the opinion is
8 not entitled to controlling weight.

9 A review of the relevant factors for determining weight supports the ALJ's
10 decision to accord this opinion less weight. First, substantial evidence in the
11 record indicates that the claimant has some ability to work consistent with the
12 ALJ's determination that Mr. Eldhardt is not disabled. *See Ghanim*, 763 F.3d at
13 1161 (factors for weighing contradicted treating physician's opinion include "the
14 consistency of the physician's opinion with the record as a whole."). For example,
15 medical records from Rockwood Clinic dated March 19, 2013 indicates that Mr.
16 Eldhardt complained of right knee pain described as "pressure ache and moderate",
17 and complained of swelling and knee instability. ECF No. 13-9 at 31. However,
18 Mr. Eldhardt had no difficulty kneeling, no pain at night, and could walk 15-30
19 minutes without knee pain. ECF No. 13-9 at 31.

20 Second, the opinion is not supported by objective evidence. *Bray*, 554 F.3d

1 at 1228 (“ALJ need not accept the opinion of any physician, including a treating
2 physician, if that opinion is brief, conclusory, and inadequately supported by
3 clinical findings.”) (quotation, internal brackets, and citation omitted); *Ghanim*,
4 763 F.3d at 1161 (factors for weighing contradicted treating physician’s opinion
5 include “‘supportability’ of the physician’s opinion with medical evidence . . .”).
6 In deciding, the ALJ adequately discussed the claimant’s treatment records in the
7 determination of non-disability and found that “most of Dr. [Schmitt’s] objective
8 findings in the treatment record are not consistent with an inability to work and are
9 not consistent with missing more than one day per month due to his impairments.”
10 ECF No. 13-2 at 33. The ALJ specifically took into account claimant’s
11 osteoarthritis and “tenderness and some pain with motion”, but there was no
12 objective evidence for the rheumatoid arthritis and evidence in the record
13 suggested a less severe limitation on Mr. Eldhardt’s ability to work. ECF No. 13-2
14 at 33.

15 The ALJ did not err in according Dr. Schmitt’s opinion limited weight.

16 **B. Discrediting Mr. Eldhardt’s symptom testimony**

17 “An ALJ is not ‘required to believe every allegation of disabling pain’ or
18 other non-exertional impairment.” *Orn*, 495 F.3d at 635 (quoting *Fair v. Bowen*,
19 885 F.2d 597, 603 (9th Cir. 1989)). Indeed, statements about pain do not, alone,
20 establish disability. 20 C.F.R. § 416.929(a). Where a medial impairment has been

1 established, the ALJ must provide “specific, cogent reasons for the disbelief.”
2 *Orn*, 495 F.3d at 635 (citing *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595,
3 599 (9th Cir. 1999) (quoting *Lester*, 81 F.3d at 834)). The ALJ must give “clear
4 and convincing” reasons for rejecting the claimant’s testimony where there is no
5 “affirmative evidence” the claimant was a malingerer. *Id.* (citation omitted)

6 The ALJ reviewed the record as a whole and found “that the degree of
7 limitation the claimant alleges, and his allegation he is unable to perform work, is
8 not consistent with the overall objective evidence of record.” ECF No. 13-2 at 34.
9 Plaintiff complains that the “ALJ failed to provide specific, clear, and convincing
10 reasons for discrediting Mr. Eldhardt’s symptom testimony.” ECF No. 16 at 14.
11 This is not the case. As the record demonstrates, the ALJ put significant effort
12 detailing what limitations the medical evidence actually supported in comparison
13 to the complaints of Mr. Eldhardt. *See* ECF Nos. 13-3 at 13-15; 13-2 at 27-34.

14 In making the determination, the ALJ clearly showed there was a lack of
15 medical evidence substantiating—and positive evidence contradicting—Mr.
16 Eldhardt’s testimony with respect to Mr. Eldhardt’s limitations. *See* ECF Nos. 13-
17 2 at 27-34; 13-3 at 14-15; *see also, e.g.*, ECF No. 13-2 at 28 (ALJ specifically
18 noting that the results of laboratory testing did not indicate claimant had
19 rheumatoid arthritis); ECF No. 13-3 at 14 (subsequent imaging to support
20 diagnosis of thoracic outlet syndrome was normal; the MRI was unremarkable and

1 no further treatment for the claimant's thoracic outlet syndrome was sought or
2 received; imaging studies were negative); ECF No. 13-2 at 30 ("on admission the
3 claimant reported feeling relatively well with the exception of some hip and lower
4 extremity joint problems, saying that his angina symptoms have resolved . . .").

5 The credibility assessment provides clear and convincing reasons for
6 discrediting Mr. Eldhardt's testimony beyond the RFC ascribed by the ALJ, and
7 the conclusion is supported by substantial evidence. *Garrison*, 759 F.3d at 1012
8 ("An ALJ can satisfy the 'substantial evidence' requirement by 'setting out a
9 detailed and thorough summary of the facts and conflicting clinical evidence,
10 stating his interpretation thereof, and making findings.'") (quoting *Reddick v.*
11 *Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).

12 **C. RFC Assessment**

13 Plaintiff complains that the ALJ erred when it found that "Mr. Eldhardt has
14 no right arm or hand limitations, and that he has only reaching limitations—no
15 handling or fingering limitations—with his left arm." ECF No. 16 at 19.
16 Defendant argues that the record evidence does not support any handling or
17 fingering limitations, noting that an ALJ need not accept subjective complaints
18 without objective support and need not incorporate evidence from the opinion of a
19 treating physician he discounted. ECF No. 21 at 13 (citing *Vertigan v. Halter*, 260
20 F.3d 1044, 1049 (9th Cir. 2001), and *Batson v. Comm'r of Soc. Sec.*, 359 F.3d

1 1190, 1197 (9th Cir. 2004)). Defendant is correct.

2 Where substantial evidence supports the ALJ's conclusion, the
3 determination will not be disturbed, even if there is an alternative interpretation the
4 ALJ could have adopted. *Orn*, 495 F.3d at 630. Here, the ALJ specifically
5 addressed Mr. Eldhardt's complaint that his arms fell asleep, ECF No. 13-3 at 14,
6 and took into account the alleged "limit [on Mr. Eldhardt's] ability to lift and reach
7 with the left upper extremity", ECF No. 13-3 at 15; but the ALJ found that
8 "objective evidence has been sparse to substantiate any significant symptoms."
9 Moreover, Dr. Schmitt opined that Mr. Eldhardt did not have handling problems in
10 2008 and in 2010, ECF Nos. 13-7 at 5; 13-8 at 75 and Mr. Eldhardt's father
11 indicated that the claimant has not changed in his activities since the onset date,
12 ECF No. 13-6 at 154.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 Defendant's Motion for Summary Judgment (ECF No. 21) is **GRANTED**.

15 Plaintiff's Motion for Summary Judgment (ECF No. 16) is **DENIED**.

16 The District Court Executive is directed to enter this Order and Judgment
17 accordingly, furnish copies to counsel, and close the file.

18 **DATED** February 17, 2017.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge